

In the Matter Between: )  
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 CITY OF STOCKTON, Employer, ) Factfinding Report  
 ) and Recommendation  
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 and )  
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 OPERATING ENGINEERS LOCAL #3, AFL/CIO, )  
 Union, )  
 )  
 Re: PERB Case No. SA-IM-152-M )  
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HEARING: July 22, 2015  
 Stockton, California

FACTFINDING PANEL:

Neutral Panel Member: Wilma R. K. Rader  
 Union Panel Member: Gregory C. Ramirez  
 City Panel Member: Ann Goodrich

APPEARANCES:

For the Union: Michael Egginer  
 Business Representative  
 OPE3, Public Employee Division  
 1916 North Broadway  
 Stockton, California 95205

For the City: Allyson Hauck  
 Renne Sloan Holtzman Sakai  
 Public Law Group  
 350 Sansome Street, Suite 300  
 San Francisco, California 94104

## INTRODUCTION

This Factfinding proceeding arises out of bargaining disputes between the **City of Stockton** and **Operating Engineers Local No. 3, AFL/CIO**. The proceeding went forward under the authority of the California Public Relations Board (Case No. SA-IM-152-M). At the hearing conducted on July 22, 2015, in Stockton, California, the parties were afforded full opportunity to present their respective positions and to introduce relevant documentary evidence.

## BACKGROUND

The City of Stockton was hit particularly hard by the last economic recession. Between 2009 and 2011, the unemployment rates soared and the housing market crashed. The City had the worst foreclosure rate in the nation. A double-digit decline in property values was reflected in a similar decline in the General Fund revenues. In May 2010 and again in 2011, The City council issued State of Emergency Resolutions based on its financial circumstances. Employees were asked to forego raises and accept furloughs. Even with major concessions made by its

various unions, the City was unable to address its budget deficit and, on July 26, 2012, filed for bankruptcy under chapter 9 of the U. S. Code of Bankruptcy. On February 25, 2015, after a contentious legal battle, the City implemented a court approved Long-Range Plan of Adjustment (Plan) that provided for budgetary and financial stabilization, restructured the City's debt obligations, and it emerged from bankruptcy. The court retained jurisdiction and requires the City to adhere to the Plan and submit periodic financial reports. A creditor's law suit challenging the plan is still pending.

#### **BARGAINING HISTORY**

The Memorandum of Understanding (MOU), which covered the period July 1, 2012 - June 30, 2013 was extended with minor changes. Beginning in April 2014, the City and the Union began to meet to negotiate a successor contract. After eight meetings, on February 4, 2015, shortly before the City exited bankruptcy, the Union declared impasse. A subsequent mediation was unsuccessful and pursuant to the provisions of Government Code Section 3505, the matter proceeded to Factfinding.

1A. Wages:

City offered two percent COLA in FY 15-16 effective upon agreement, ratification by the union and implementation of the city counsel.

Union asking for increase of three percent (reduced from five percent at the Factfinding hearing on July 22, 2015).

City offers 16 percent increase for the Senior Plant Operator Position.

Union withdraws its objection to this but asks that the City move expeditiously to adjust the entire unit's comparability gap.

1B. Other Compensation:

City offered two percent increase in its contribution to Employees' health premiums for FY 14-15, and an additional two percent in FY 15-16 such increase to be effective upon implementation.

2. The City is asking that each employee enrolled in OpE3s Health Plan, pay a health administrative fee in the amount of \$26.98 per month.

3. Term of the Agreement

4. The City proposes to change the FLSA classification of the Microbiologist and Chemist positions from non-exempt to exempt.

5. Status of the Items on which the parties reached tentative agreement (TA) prior to impasse.

## **POSITION OF THE PARTIES**

### **Position of the City**

The City has recently exited bankruptcy and its proposal on compensation and benefits is based on its ability to pay in view of the current year's budget and Plan of Adjustment. The City's promise to follow this plan was a critical component in the bankruptcy court's decision to permit the City to exit bankruptcy. The City, its employees, and the public, have endured six grueling years of cuts. These cuts were the result of the recession but also of the decisions made in the past subjecting the City to excessive debt burdens and out of control labor costs. The City is finally in a place to move forward, to expand and grow slowly, and provide modest but fair increases to employee compensation. It must balance the restoration of

of the City's employee groups during this time enabled Stockton to achieve desperately needed significant savings for the City. Its wage proposal is not a reflection of what the employees deserve due to market values or a complete restoration of what they have given up. It is the only financially responsible option for the City. These exact terms have been offered to all nine of the other bargaining units and nearly all of them, including police and fire, have accepted them.

#### **Position of the Union**

During the years of the City's fiscal crisis, employees were asked to forego wage increases and to accept furloughs. They also agreed to pay the seven percent employee's share of pension costs and accepted reduced medical benefits. Other concessions included elimination of the retiree medical benefits, elimination of the 50 percent sick leave cash out on separation, reduction of one holiday, and elimination of longevity pay. There were major reductions of staffing levels, including 42 positions in this unit. As of July 2015, 20 of these positions remained unfilled. The Union contends that it was the General Fund that was affected by the bankruptcy and not the Enterprise Funds which support this unit. The Union argues that the City is picking and choosing which employees may be

given a larger wage increase, 16 percent to the Senior Plant Operator, while the unit as a whole is at least 12.5 percent below similar employees in comparable local and regional cities. The City can afford a modest increase above its offer to begin to address this gap.

### **CRITERIA**

The factors that the Panel must consider in resolving the issues are set forth in California Government Code Section 3505(d), 1-8, as follows:

1. State and Federal Laws.
2. Local Rules, Regulations or Ordinances.
3. Stipulations of the parties.
4. The interests and welfare of the public, and the financial ability of the Agency.
5. Comparison of the wages, hours, and conditions of employment of the employees involved.
6. The consumer price index for goods and services.
7. Overall compensation presently received by the employees.
8. All of the facts not confined to those specified in items 1-7 inclusive, which normally are traditionally taken into consideration in making the findings and recommendations.

## **WAGES: FINDINGS AND DISCUSSIONS**

The City has about 1,500 employees, 153 of whom work in the Operations and Maintenance unit of the municipal utilities district (O&M). The average wage is \$54,508 and the cost of a one percent increase is \$136,374. The CPI is just below two percent.

The services performed by the MUD - to provide clean drinking water, properly collect/treat/and dispose of waste water, and assure proper drainage of storm water to prevent flooding - are essential to the public health and safety of the City's residents. Each of these enterprises is supported by user fees restricted to this specific utility and each has an independent financial structure and unique regulatory requirements. The financial picture of the Enterprise Funds is presently less than robust.

### The Water Utility:

The water utility saw a double digit decline in 2014 water consumption because of drought conservation measures with a proportionate decline in revenue. For now, the water utility is relying on the existing fund balance and rate stabilization fund (to pay bond indebtedness) to cover expenses until more normal water use resumes bringing increased revenues.



The Waste Water Fund:

Pursuant to a consent decree in 2010, the City council approved a five tier rate increase to comply with bond covenants, supports scheduled capital improvements, and reduced sanitary sewer overflows. This rate will increase by the CPI during this FY. Nearly all of the capital improvement projects are necessary to complete required mandates and area planned and scheduled on a long term basis. The completion of these projects will ultimately require debt financing.

Storm Water Utility:

For years now, the user fees have been insufficient to properly fund operating needs. Significant cuts in all O&M activities have been implemented. Without voter approval of a ballot measure to provide funding, aging infrastructure will increasingly deteriorate and fail (Un.Exh.4). There is no evidence that the City is currently actively engaged in attempting to procure adequate funding for its storm water utility. The department anticipates that this FY utilities overall will deplete the Enterprise Fund by one-half (City Brief, App. 3).

In argument and documents presented at the hearing, including the City Manager's Budget Message (City Exh. G), the

City has made a strong case for the necessity to proceed with fiscal caution as the recovery from bankruptcy begins. However, the Fact Finder is required to look at other factors as well and, in this case the public interest is entwined with comparability considerations. The comparability figures for this Union are stark. Wages for this unit are on average between 12.5 and 16 percent below market value of comparable regional and local cities (Un.Exh.6; City Powerpoint Presentation, p. 55). The City acknowledges that under the Plan of Adjustment, it may exceed the two percent increase offered when necessary to fill a "mission-critical" position. It did this when it offered a 16 percent increase to the Senior Plant Operator position, which is T3 certified. However, this is not the only position in the unit whose compensation is seriously below median regional market value. See, for example, Plant Maintenance Workers (-30%), Senior Plant Maintenance Mechanic (-16%), Water Field Technician (-21%), Materials Specialist (-16.6%). Other positions range from -3% to -12%. (City Exh. H).

During FY 14-15, the San Joaquin County Grand Jury, in response to a complaint, investigated the MUD. It found that although MUD operates with Enterprise Funds, it suffered collateral damage during the bankruptcy and now struggles with issues related to significant turnover (including critical technical personnel and top management), aging infrastructure, and impaired ability to recruit and retain skilled technical staff due to below market compensation. Cuts to pay and benefits have resulted in low staff morale. During the fiscal

crisis and bankruptcy, this unit lost 42 positions. As of July 2015, there were still 20 vacancies in the department. The Grand Jury report warned that the City's current investment in training opportunities for MUD employees will be lost if MUD continues to lose skilled technical staff to other municipalities and water agencies offering significantly higher compensation. The report states:

... Services provided by MUD are essential to public health and safety... It cannot function optimally without being fully staffed with skilled, experienced employees. Specialists such as engineers, electricians, mechanics, and plant operators are in high demand. In order for MUD to recruit and retain qualified skilled technical personnel, it must regain a competitive hiring position. (Un. Exh. 8, pp. 1, 14).

The City's dedication to austerity is admirable but what is missing from its current proposal is a measured plan to begin to address this unit's comparability gap. Vague assurances that this will be dealt with "someday" fails to honor the unit's employees who perform services essential to the public's health and safety and, in fact, denies the urgency of the current situation. Addressing the comparability gap piecemeal, one position at a time as necessary to fill a vacancy, as the City is doing currently, is clearly not the best way to solve the problem. It creates inequities within the unit with some positions being adjusted and others not, and fails to address

the comparability issues that touch the unit as a whole. Taking a more comprehensive approach, the Grand Jury recommended that the City Manager conduct a salary survey of MUD positions with an eye to bringing wages and benefits in line with other utility departments and water agencies so that the City can better compete for these valuable employees.

Regarding the Union's demand for a wage increase of three percent, instead of the City's offer of two percent, the City argues that nearly all of the other bargaining units in the City have accepted its offer. What we do not know is whether or not these other units had similar comparability gaps. While water revenues are expected to remain flat, City tax revenues are expected to remain stable or increase slightly (City Exh. G, p. A-7). The Utilities' total budget for FY 15-16 for Operations and Maintenance is based on full staffing. Since there are still 20 vacancies unfilled and it is unlikely that all of these will be filled in FY 15-16, we find that there are sufficient funds in the department budget to pay for this unit to get an increase of three percent, rather than the two percent offered. In any event, the City asserts that its wage proposal does not depend on the source of funding for any particular position.

Employees in this unit perform services that are essential to public health and safety. They have endured years of cuts in pay and benefits and severe staff reductions. This has been a time when the City's growth has meant that the Department employees have had to do more with less. At the same time, their compensation is -12% to -16% below the regional market value. This modest increase of three percent is but a very small step in the right direction.

#### **WAGES: FACTFINDERS' RECOMMENDATIONS**

For all of the reasons set forth above, and on the basis of the record as a whole, the Panel recommends that this unit receive an increase in the amount of three percent, and further recommends that the City implement the recommendation of the Grand Jury that the City Manager shall conduct a salary survey of MUD positions with an eye to bringing these wage and benefits in line with other utility departments and water agencies so that the City can better compete for these valuable employees.

#### **OTHER COMPENSATION:**

The City has offered to increase its contribution to employee's health premiums by two percent for FY 2014-15, and another two percent for FY 2015-16.

#### **FACTFINDING RECOMMENDATION:**

The Panel does not know if this unit has already received this increase for FY 2014-2015. If not, then an increase in the amount of four percent shall be paid for FY 2015-16. If the increase has been paid previously, then a two percent increase shall be paid for the current FY.

**HEALTH ADMINISTRATIVE FEE:**

The Union's objection to this fee is based in large part on a mistaken belief that only enrollees in OpE3's health plan are being asked to pay this fee - placing the plan and its enrollees at a disadvantage compared to those enrolled in the City's Plan and Kaiser. The fact is that those enrolled in these other plans are paying a monthly administrative fee to the City in addition to their plan premiums - including Ope3 members who have chosen to enroll in these other plans (City's Power presentation, p. 79; also see Segal report, pp. 5, 7: the administrative fee is included in the quoted premium rates). In other words, OpE3 plan enrollees have been the only members of the bargaining unit not paying an administrative health fee.

The HR department documented how it calculates the health administrative fee. Essentially, it covers the cost of staff time and training and office expenditures expressly devoted to the health administration of the various plans based on enrollment and also includes the administration of other plans

that cover all employees (e.g., EAP, life insurance, long-term disability insurance), the preparation of various reports, handling open enrollment, tracking all employees and their planned choices for the eligibility system, interfacing with payroll, conducting qualified dependent audits. OpE3 health plans allocation is two percent of these total expenses, an amount set at \$26.98 per month per employee enrolled (approximately 35 employees) for FY 15-16.

**FACTFINDING RECOMMENDATION:**

On the basis of the record, the Panel finds that the fee is justified. It recommends that the City's proposal that OpE3 health plan enrollees pay an administrative fee of \$26.98 per month for FY 15-16 be adopted provided, however, that this fee shall be handled administratively and paid in the same manner as in other plans (included in the quoted premium rates and paid in that manner). Should this require approval of OpE3's plan administrators, then receiving this fee is contingent upon getting that approval.

**CITY'S PROPOSAL TO RECLASSIFY THE POSITIONS OF THE MICROBIOLOGIST AND THE CHEMIST:**

The City proposes to reclassify these positions from non-exempt to exempt under the FLSA. Citywide, many groups of employees, both represented and unrepresented, have converted dozens of classifications from non-exempt to exempt. Both of these

positions meet FLSA duties and salary tests, are both professional jobs, and therefore meet FLSA standards for exempt positions. The Microbiologist position has been vacant since July 2013. Between November 2012 and November 2013, the person in this position worked only one-half hour of overtime. During the same period, the person in the Chemist position worked a total of seven hours of overtime. Providing one week of additional vacation time actually advantages both positions. The Union offered no argument to support its opposition.

**FACTFINDING RECOMMENDATION:**

The Panel recommends that the City's proposal be adopted.

**TERM OF THE AGREEMENT;**

The City proposes that the MOU run from the date of execution until June 30, 2016. The Union proposes that the MOU run from July 1, 2015 to June 30, 2016.

**FACTFINDING RECOMMENDATION:**

The Panel recommends that the agreement run from July 1, 2015 to June 30, 2016.

Reasoning: The rank and file unit members who will benefit from any increase in wages and benefits have no control over the timing of contract negotiations or impasse procedures including Factfinding. They should not be penalized for any delays for which they have no responsibility.



**ISSUES ABOUT WHICH THE PARTIES PREVIOUSLY REACHED AGREEMENT**

**(TAs):** (See City Exh.A&K)

**FACTFINDING RECOMMENDATION:**

The Panel recommends that these all be adopted as previously agreed to. We find that it is in the best interest of the parties that all minor disputes between them be resolved for now and that they move forward.



Wilma R.K. Rader  
(Neutral Panel Member)

8/17/15

Date  
(concur) (dissent)

(see attached)

Gregory C. Ramirez  
(Union Panel Member)

Date  
(concur) (dissent)

(see attached)

Ann Goodrich  
(City Panel Member)


Date  
(concur) (dissent)

**ISSUES ABOUT WHICH THE PARTIES PREVIOUSLY REACHED AGREEMENT****(TAs):** (See City Exh.A&K)**FACTFINDING RECOMMENDATION:**

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Wilma R.K. Rader  
(Neutral Panel Member)

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Date  
(concur) (dissent)

  
\_\_\_\_\_  
Gregory C. Ramirez  
(Union Panel Member)

9/14/2015  
\_\_\_\_\_  
Date  
(concur) ~~(dissent)~~

\_\_\_\_\_  
Ann Goodrich  
(City Panel Member)

\_\_\_\_\_  
Date  
(concur) (dissent)

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Wilma R.K. Radar  
(Neutral Panel Member)

Date  
(concur) (dissent)

Gregory C. Ramirez  
(Union Panel Member)

Date  
(concur) (dissent)

  
Ann Goodrich  
(City Panel Member)

  
Date  
(concur) (dissent)

*see attached 2 page dissent*

**Goodrich Dissent to Fact finder 's Conclusions and Recommendations.****City of Stockton vs. Operating Engineers O and M unit.**

As the City's Panelist I offer this dissent to the following portions of the fact finder's recommendations.

**Compensation Increase**

This report recommends that the City ignore a total lack of ability to pay for an additional increase in compensation over the City's 2% increase and commit to an ongoing yearly cost without any expectation of funding to cover that commitment. This is recommending the same lack of responsible financial behavior as caused the City to file for bankruptcy in 2012.

While this recommendation cites the deficit spending of these 3 funds, it ignores that water rates continue to decline due to the drought, and that new "hook ups" for service are less than in past years due to the ongoing recession in the local Stockton economy. Also that the revenues for these funds is set at the CPI and is not sufficient to cover even existing costs plus increases in the employer PERS rates which were 2.2% in 2015. The PERS rate increase and the COLA offered by the City will increase its costs for this fiscal year over 4.3% (Additional PERS has notified the City of future increases, 2. % in 2016, 1.8% in 2017, 1.7% in 2018 and 2% 2019, that have to be covered on top of any compensation improvements in those years.)

In searching for an ability to pay for the recommended additional increase, the fact finder proposes that current vacancies in these funds can be used to finance this ongoing additional 1% salary increase. Unless the report is proposing that the City leave these current positions vacant permanently to fund an ongoing salary increase, then the recommendation seems to be proposing that the City use one time money to finance an ongoing expense. This is the same behavior as was identified, as a major cause of the City's need to file for bankruptcy.

This also ignores testimony from the City that many of these vacancies are being held vacant specifically due to a lack of funds caused by revenue reductions and increased costs in the first place. Additionally, the City is in the process of filling the other vacancies, which when completed eliminates any salary savings. This recommendation also ignores the testimony from the City that any additional compensation costs would have to be covered by reductions in services since these funds were already operating at a deficit and that no money was available to cover any additional increases.

The City, it's employees and its residents have suffered for many years from fiscal mismanagement, which often involved making ongoing financial commitments without the ongoing ability to pay for those commitments. The City promised the

Bankruptcy court, its creditors and the residents of Stockton that it had learned from these mistakes and would not repeat them. The court and the creditors specifically raised the issue that Stockton would revert back to this very behavior in the arguments over whether Stockton's Plan of Adjustment should be approved by the Court and the City allowed to exit bankruptcy. The City's long-range fiscal plan was part of the City council and management commitment to be prudent and not make commitments that it did not know it could afford. The City also set up under Measure B a citizen oversight committee to review the expenditures of the City to insure prudent management.

The recommendation of this report is that the City, not even one year out of bankruptcy, reverts to the very behavior that caused it to file for bankruptcy.

I dissent on this recommendation.

#### **Effective Dates of Compensation Increases**

This report seems to be saying that the compensation increases in salary and health insurance contribution by the City be retroactive to July 1, 2015. The City offer is not retroactive and the increase 7 of the other City unions agreed to is not retroactive. The parties started bargaining in April 2014, and the union, as agent of the employees is the party that moves the process to mediation and to fact-finding, not the City. I am confused by the logic of the report that the employees have no say in how long the collective bargaining process takes, when their exclusive agent, the union is a full party in the process and by law, the only party that can request the parties go to fact-finding.

I dissent on this recommendation.

Respectfully submitted

Ann Goodrich

City Panel Member  
O and M Panel.